

FREDRIC D. WOOCHEER (SBN 96689)
 MICHAEL J. STRUMWASSER (SBN 58413)
 BRYCE A. GEE (SBN 222700)
 STRUMWASSER & WOOCHEER LLP
 100 Wilshire Boulevard, Suite 1900
 Santa Monica, California 90401
 Telephone: (310) 576-1233
 Facsimile: (310) 319-0156
 E-mail: fwoocher@strumwooch.com

J. WILLIAM YEATES (SBN 84343)
 KEITH G. WAGNER (SBN 210042)
 JASON R. FLANDERS (SBN 238007)
 LAW OFFICE OF J. WILLIAM YEATES
 3400 Cottage Way, Suite K
 Sacramento, CA 95825
 Telephone: (916) 609-5000
 Facsimile: (916) 609-5001
 E-mail: byates@enviroqualitylaw.com

*Attorneys for Plaintiffs Rancho San Juan
 Opposition Coalition, et al.*

UNITED STATES DISTRICT COURT
 NORTHERN DISTRICT OF CALIFORNIA

IN RE COUNTY OF MONTEREY
 INITIATIVE MATTER,

WILLIAM MELENDEZ, *et al.*,

Plaintiffs,

v.

BOARD OF SUPERVISORS OF THE
 COUNTY OF MONTEREY, *et al.*,

Defendants,

Consolidated with

ROSARIO MADRIGAL, *et al.*,

Plaintiffs,

v.

COUNTY OF MONTEREY, *et al.*,

Defendants.

CASE NO. C 06-01407 JW

RANCHO SAN JUAN OPPOSITION
 COALITION'S OPPOSITION TO
 COUNTY DEFENDANTS' MOTION
 FOR CONSOLIDATION

Judge: Hon. James Ware
 Ctrm: 8
 Date:
 Time:

1 Now that the *In re Monterey Referendum* cases are fully briefed and are scheduled for a
2 dispositive hearing on December 11, 2006, on the parties' cross-motions for summary judgment,
3 County Defendants want to send that action back to "square one" by canceling that hearing,
4 consolidating the action with the *In re County of Monterey Initiative Matter*, and ordering an entirely
5 new round of briefing for a joint hearing on both actions several months from now. Plaintiffs
6 Rancho San Juan Opposition Coalition ("RSJOC") strenuously oppose County Defendants' Motion
7 for Consolidation, which appears to be nothing more than yet another delaying tactic aimed at further
8 depriving RSJOC Plaintiffs' and all Monterey County residents of a timely vote on the proposed
9 referendum and initiative measures at issue in each of these cases. The consolidation requested by
10 County Defendants is completely inappropriate here because it would needlessly cause delay,
11 significantly prejudicing RSJOC Plaintiffs, and would add further expense to all parties, without
12 saving any substantial time or effort. *See Huene v. United States*, 743 F.2d 703, 704 (9th Cir. 1984)
13 (in considering whether to consolidate, the district court "weighs the saving of time and effort
14 consolidation would produce against any inconvenience, delay, or expense that it would cause").

15 As County Defendants recognize, the cross-motions for summary judgment in the *In re*
16 *Monterey Referendum* action are fully briefed and set to be heard by the Court on December 11,
17 2006. Yet County Defendants absurdly argue that it would somehow "avoid unnecessary costs" and
18 save "time" to consolidate the two separate actions and require the parties to completely re-brief
19 these motions in a "joint brief." County Defendants' Motion for Consolidation, at 2-3. But
20 consolidating these cases at this late juncture would only result in additional cost and further delay,
21 which RSJOC suspects is exactly what County Defendants desire. Not only would a ruling on the
22 merits in the *In re Monterey Referendum* action be delayed at least "a month or so," as County
23 Defendants admit, but consolidation could also unnecessarily delay and complicate implementation
24 of the Court's order(s) on the merits of the two sets of cases. For example, if the Court were to order
25 both measures to immediately be submitted to a vote of the people, but a party in only one of the
26 matters were to seek appellate review, County Defendants would likely seize upon that appeal to
27
28

1 avoid holding an election on the non-appealed measure.¹

2 More fundamentally, with each additional day that passes — whether it be one month, three
3 months, six months, or more — without the County submitting the referendum measure to a vote
4 of the people, RSJOC and the 15,000 voters who signed the referendum petitions are denied their
5 First Amendment rights to referendum. *See Sammartano v. First Judicial District Court*, 303 F.3d
6 959, 973 (9th Cir. 2002) (infringement of First Amendment freedoms, “even for minimal periods
7 of time, ***unquestionably constitutes irreparable injury***”) (emphasis added). And during this
8 time, the County continues its rush to complete its own amendments to the General Plan, which —
9 once completed — the County will no doubt argue somehow moot these referendum and initiative
10 measures, thereby giving County Defendants the result they have wanted all along — to prevent a
11 vote on these measures altogether.

12 In addition to creating additional delay, consolidation and re-briefing will further inject a
13 significant procedural complexity into these actions that does not currently exist, because these
14 actions do not involve “nearly identical questions of law,” as County Defendants mistakenly contend.
15 County Defendants’ Memorandum, at 3. While the *In re Monterey Referendum* action raises only
16 the VRA claim that the referendum petitions should have been translated into multiple languages,
17 the *In re County of Monterey Initiative Matter* also involves various state-law claims that will either
18 need to be argued before this Court or remanded to state court. County Defendants do not suggest
19 how they expect those claims to be resolved if the two different actions are to be consolidated for
20 purposes of cross-motions for summary judgment on the VRA issue alone.

21
22
23 ¹There are also complications arising from the somewhat different procedural postures and
24 legal status of the two sets of cases. As noted in the text *infra*, in the *In re Monterey Referendum*
25 cases, County Defendants rely *exclusively* on the Voting Rights Act defense as their justification for
26 refusing to submit the qualified Referendum to a vote of the County’s electorate. In the *In re County*
27 *of Monterey Initiative Matter* action, however, County Defendants claim that there are also
28 legitimate state-law grounds for their refusal to place the General Plan Initiative on the ballot. County Defendants’ Motion to Consolidate does not specify whether the County contemplates that these state-law issues will be addressed in the joint brief and hearing that they propose, but the very existence of these additional issues in the initiative action negates any possible “efficiency” that might result from the requested consolidation. Most problematic, if the state-law issues are not resolved in the context of the proposed joint hearing, then presumably there cannot and will not be a final judgment rendered in the initiative matter, possibly precluding any immediate implementation of the Court’s order or any appeal being taken from the consolidated ruling on the Voting Rights Act issue.

1 Finally, County Defendants are mistaken in contending that this Court needs to consolidate
2 these cases in order to arrive “at a uniform set of rules.” County Defendants’ Memorandum, at 4.
3 Each of these cases will be heard by this Court, and there is no risk that the Court will suddenly
4 forget its prior decision with respect to the referendum petitions and will somehow issue a
5 conflicting decision when it rules upon the validity of the initiative petitions.

6 Because consolidation would only result in additional delay and substantial prejudice to
7 Plaintiffs in *In re Monterey Referendum*, RSJOC respectfully requests that the Court deny County
8 Defendants’ Motion For Consolidation. However, if County Defendants are truly interested in
9 saving the parties and the Court further time and expense, RSJOC Plaintiffs suggest that this Court
10 should order an expedited hearing on the Voting Rights Act issue in the *In re County of Monterey*
11 *Initiative Matter*, scheduling the hearing for December 11, 2006, so that it can be heard together with
12 the hearing that is currently set for that date in the *In re Monterey Referendum* action. The parties
13 in the initiative case can be ordered to file a single brief by December 4, 2006, setting forth their
14 respective positions as to why the General Plan Initiative is or is not subject to Section 203 of the
15 VRA. As County Defendants note, this issue is very similar to the issue that has already been
16 extensively briefed by the same counsel in the referendum context, and the parties in *In re County*
17 *of Monterey Initiative Matter* have themselves just briefed that very issue to the Ninth Circuit in
18 connection with the *Melendez* Plaintiffs’ Motion to Remand that action to this Court in light of the
19 en banc court’s decision in *Padilla v. Lever*, 463 F.3d 1046 (9th Cir. 2006). Given the urgency of
20 the matter — the General Plan Initiative, after all, should have been submitted to the voters six
21 months ago, at the June 2006 primary election — it is appropriate to expedite further proceedings
22 in the *In Re County of Monterey Initiative Matter* upon remand from the Ninth Circuit, and — in
23 marked contrast to County Defendants’ proposed consolidation — RSJOC Plaintiffs’ proposal would
24 truly save the Court and the parties the time and expense of extensive additional briefing and
25 duplicative hearings, achieving the result that the County purports to desire.

26 In any event, RSJOC Plaintiffs’ counsel would be pleased to participate in a telephonic
27 conference with the other parties in the *In re County of Monterey Initiative Matter* as soon as
28 possible to discuss the scheduling of further proceedings in that matter in response to the Ninth

1 Circuit's Judgment and Order vacating this Court's March 23, 2006, order and declaratory judgment
2 and remanding the matter for further consideration in light of the en banc decision in *Padilla v.*
3 *Lever*. Since time is of the essence in this matter, RSJOC Plaintiffs join with the County
4 Defendants/Respondents in urging the Court to schedule a telephonic status or case management
5 conference as soon as possible.

6
7 DATE: November 29, 2006

Respectfully submitted,

8 STRUMWASSER & WOOCHELL LLP
9 Fredric D. Woocher
10 Michael J. Strumwasser
11 Bryce A. Gee

12 By /s/
Fredric D. Woocher

13 *Attorneys for Plaintiffs Rancho San Juan Opposition*
14 *Coalition, et al.*